

REMARKS

Applicant requests continued examination of Application Number 10/645,186, specifically, applicant requests withdrawal of the finality of the July 8, 2008 Office Action and reconsideration and further examination of the above-referenced application, including consideration of the above amendments and following remarks.

I. PRIOR AMENDMENTS AND CURRENT CLAIM SET

Paragraphs 1-3 of the July 8, 2008 Office Action state,

The amendments made in claims 1, 3, 6, 10, 18, 19, 36, 43, 50, 52 and 64-66 in the Amendment filed April 9, 2008 have been received and considered by Examiner.

New claim 70 presented in the Amendment filed April 9, 2008 has been received and considered by Examiner.

Applicant's amendments in the specification in the Amendment filed April 9, 2008 have been received and considered by Examiner.

Applicant assumes that the amendments and new claims referenced by the Examiner in Paragraphs 1-3 of the July 8, 2008 Office Action have not only been received and considered by the Examiner but also entered in the present application. Applicant respectfully requests that the Examiner confirm this. The following description of the application and claim set assumes that all previous amendments (including those in April 9, 2008 Amendment) have been entered.

With this submission, no new matter has been added to the above-referenced application.

Claims 1, 16, 43 and 50 have been amended with this submission. Claim 1 is amended to specify the sheet of heat-shrinkable film as comprising a multilayer film including a peelable system adapted to peel at an interior layer of the film. Basis for this amendment is found in now-cancelled claim 6 and at Page 9 lines 22-26 and Page 11 lines 19-21 of the original application as filed, corresponding to Paragraphs 30 and 33 of the original application as published. Claim 16 is amended in light of the amendments to claim 1, specifying the film as a "multilayer" film of claim 1. Claim 43 is amended to specify the sheet

of heat-shrinkable film as comprising a multilayer film including a peelable system adapted to peel at an interior layer of the film. Basis for this amendment is found in now-cancelled claim 6 and at Page 9 lines 22-26 and Page 11 lines 19-21 of the original application as filed, corresponding to Paragraphs 30 and 33 of the original application as published. Claim 50 is amended to specify the sheet of heat-shrinkable film as including a peelable system adapted to peel at an interior layer of the film. Basis for this amendment is found in now-cancelled claim 6 and at Page 11 lines 19-21 of the original application as filed, corresponding to Paragraphs 30 and 33 of the original application as published.

Claim 6 has been canceled with this submission.

Claims 2, 14, 20, 37 and 44-49, 51 and 63 have been previously cancelled.

Claims 3, 10, 18-19, 33, 36, 38-40, 52, 54, 62, 64-66 and 70 have been previously presented.

Claims 4-5, 7-9, 11-13, 15, 17, 21-32, 34-35, 41-42, 53, 55-61 and 67-69 are original.

Claims 71, 72 and 73 are new, depending from claims 1, 43 and 50, respectively, and specifying three layers of a heat-shrinkable film and locations within these layers at which the film is adapted to peel. Basis for these new dependent claims is found at Page 9 line 22 – Page 10 line 3 of the original application as filed, corresponding to Paragraph 30 of the original application as published.

II. APPLICANT'S RESPONSE TO JULY 8, 2008 OFFICE ACTION

As stated in Paragraph 5 of the July 8, 2008 Office Action, claims 1, 3-13, 15-19, 21-36, 38-43, 50, 52-62 and 64-70 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Donovan et al. (U.S. Patent No. 5,888,648) in view of Ramesh et al. (U.S. Patent No. 6,221,410). The applicant respectfully traverses and requests that the Examiner withdraw the rejection and allow the pending claims (i.e., claims 1, 3-5, 7-13, 15-19, 21-36, 38-43, 50, 52-62 and 64-73) of the present application, in light of the current claim amendments and the substantive factual errors in the July 8, 2008 Office Action.

A. Claim Amendments

Donovan teaches a package which peels along the seal itself and not at a specific *interior* layer of the film. Donovan explains,

It is desirable to produce a package which will **separate along the seal during opening** so that the package can be easily reclosed and sealed against the passage of air.

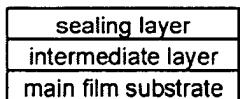
(Column 2 lines 51-54, emphasis added.) Donovan does not teach a package that peels at a specific *interior* layer of a film. With the current amendment, each of claims 1, 3-5, 7-13, 15-19, 21-36, 38-43, 50, 52-62 and 64-73 of the present application include the limitation of a multilayer film including a peelable system adapted to peel at an *interior* layer of the film..

A comparison of the structure and peelability of Donovan with the claims of the present application illustrate the significance of this limitation in view of Donovan.

Donovan teaches its invention for use in fin seals and lap seals. Column 3 lines 61-64 explains,

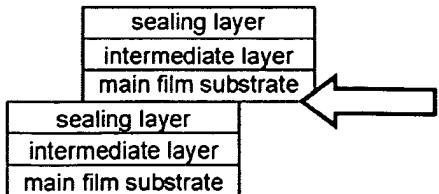
The sealing and seal improvements of the present invention are especially useful for closing packages in which a multilayer film has been joined by means of fin and lap seals.

And Donovan teaches a basic film structure of a sealant layer (comprising an intermediate layer and a sealing layer) and a main film substrate. (See Figure 5 and Column 9 lines 35-44.) In its simplest form, the basic structure of Donovan may be depicted generally as follows:



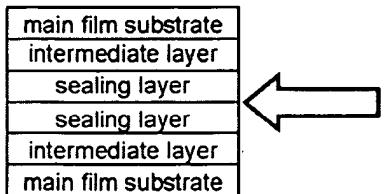
(where each layer may be multilayer or monolayer.) Therefore, the lap seal and fin seal of Donovan may be depicted generally as follows:

Lap seal:



Locations of *both* sealing and peeling are at the interface of the main film substrate and the sealing layer.

Fin seal:



Locations of *both* sealing and peeling are at the interface of the two sealing layers.

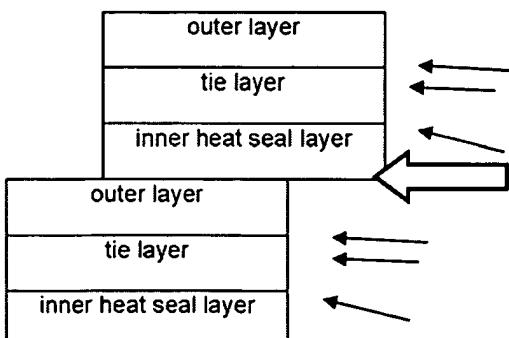
As discussed above, Donovan teaches a package that separates or peels at the seal/seal layer/interface, not a package that separate or peels at a specific *interior* layer of a film.

With the current amendment, however, each of the claims of the present application is to a package which includes a multilayer film including a peelable system adapted to peel at an *interior* layer of the film. Page 9 line 22 – Page 10 line 3 of the original application as filed, corresponding to Paragraph 30 of the original application as published, explains,

A variety of peelable films and peelable sealing systems may be employed in the present invention. In a preferred embodiment, a film comprising a coextrusion of at least three layers (referred to as three layer peelable system to distinguish it from systems using one or more contaminated seal layers described below) having an outer layer, an inner heat seal layer and a tie layer disposed between the outer layer and the inner heat seal layer is used. In this preferred three layer system embodiment, the film layers are selected such that **peeling occurs by breaking apart the tie layer and/or a bond between the tie layer and at least one of the outer and inner layers.**

(Emphasis added.) Therefore, possible lap seal and fin seal embodiments of the present application may be depicted generally as follows:

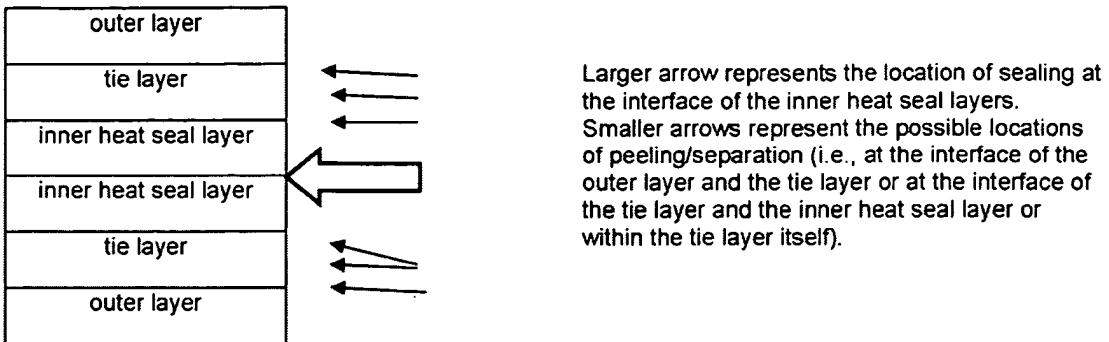
Lap seal:



Larger arrow represents the location of sealing at the interface of the inner heat seal layer and the outer layer.

Smaller arrows represent the possible locations of peeling/separation (i.e., at the interface of the outer layer and the tie layer or at the interface of the tie layer and the inner heat seal layer or within the tie layer itself).

Fin seal:



Larger arrow represents the location of sealing at the interface of the inner heat seal layers. Smaller arrows represent the possible locations of peeling/separation (i.e., at the interface of the outer layer and the tie layer or at the interface of the tie layer and the inner heat seal layer or within the tie layer itself).

In the claims of the present application, the location of sealing is distinct and separate from the possible locations of peeling/separation. This allows for the more robust and stronger seal necessary for an end-sealed packaging bag having a peelable seal and formed from a sheet of heat-shrinkable film having a shrinkage value of at least 20% shrink at 90°C in at least one direction. (See Claim 1 of the present application.) A more robust and stronger seal logically results if the location of sealing is distinct and separate from the location of peeling/separation.

In contrast, however, Donovan teaches a structure where the location of sealing is the same as the location of peeling/separation. (See Column 2 lines 51-53, "It is desirable to produce a package which will separate along the seal during opening . . .")

Applicant discusses the *disadvantages* of a package that separates along the seal (as in Donovan):

It is also contemplated that a peelable seal using one or more so-called "contaminated" surface layers may be utilized where **peeling occurs at a seal layer interface** rather than at an interior layer of film. This type of peeling system **suffers from disadvantage** associate with, e.g., **controlling the diverging properties of providing high seal strength with desirable low forms for peelings**, as well as problems of sealing under conditions which may adversely affect seal integrity, e.g., where an article being packaged deposits particulates, starch, fat, grease or other components which may lessen seal strength or hamper the ability to provide a seal of desired strength such as a strong hermetic fusion bond, e.g., by heat sealing. Such sealing systems are often referred to as two layer peeling systems, but may include 3, 4, 5, 6, 7, 8, 9, 10 or more layers in the film structure.

(Page 11 line 20 – Page 12 line 3 of original application as filed, corresponding to Paragraph 33 of original application as published, emphasis added.) With the current claim

amendments the limitation of a multilayer film including a peelable system adapted to peel at an *interior* layer of the film is included in each claim of the present application (i.e., claims 1, 3-5, 7-13, 15-19, 21-36, 38-43, 50, 52-62 and 64-73). Neither Donovan nor Donovan in view of Ramesh discloses such a limitation. As stated by the Federal Circuit in *In re Lowry*, "The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." (32 USPQ2d 1031, 1034 (Fed. Cir. 1994), citing *In re Gulak*, 217 USPQ 401, 405 (Fed. Cir. 1983).) (See also *In re Royka and Martin*, 180 USPQ 580, 583 (CCPA 1974) (Obviousness requires suggestion of all limitations in a claim.)) Donovan or Donovan in view of Ramesh does not teach or suggest all the claim limitations of claims 1, 3-5, 7-13, 15-19, 21-36, 38-43, 50, 52-62 and 64-73 of the present application. As such, the claims of the present application are patentable over Donovan and Donovan in view of Ramesh.

Not only does Donovan (and Donovan in view of Ramesh) not teach or suggest all the limitations of the claims of the present application, Donovan also teaches away from the claims of the present application. Specifically, Donovan teaches away from peeling / separation at an *interior* layer of a film. Donovan states,

Additionally, it is also desirable to have provide seals which can be readily opened by the consumer *without creating a "z-direction" tear*. A z-direction tear is *one which causes the disruption of the integrity of the multi-layer film* when the film is pulled apart at the seal. FIG. 8 depicts a z-direction tear. A z-direction tear is one which does not simply separate at the line at which the seal is formed. Instead, the separation extends to layers of the film which ripped along the layers thereof and not simply delaminated one from another. As a result of z-direction tears, it is difficult to reclose such packages to maintain freshness of the contents. When z-direction tears can be eliminated, packages are easily refolded and sealed by a mechanical means such as a clip imposed over the folds of the once-opened package. *Z-direction tears can result when the adhesive properties used to seal the package create a tensile strength greater than that required to disrupt the integrity of one or more of the layers of the film web. It is desirable to produce a package which will separate along the seal during opening* so that the package can be easily reclosed and secured against passage of air.

(Column 2 lines 34-54, emphasis added.) And Donovan continues,

In addition to the advantages set forth above, the present invention has also improved packaging prepared in accordance with the invention by *eliminating z-direction tear upon separation of the sealed films*.

(Column 5, lines 32-35, emphasis added.)

Contrary to the teachings of Donovan, each of the claims of the present application is to a package with a multilayer film including a peelable system adapted to peel at an *interior* layer of the film. Additionally, and further contrary to the teachings of Donovan, applicant creates the peelable system of the claims of the present application, in part, by using varying tensile strengths of the interior layers of the film. Applicant explains,

Permanent, peelable, and fracturable bonds may be engineered into the coextrusion process, e.g., by providing **two adjacent first and second layers having materials with a greater affinity for each other compared to the second layer and an adjacent third layer** where this establishes a relatively permanent bond between the layers, when two materials have a lesser affinity for each other. This three layer structure establishes a relatively permanent bond between the first and second layer which have a greater affinity for one another than the second or third layers which have a lesser affinity where the second layer is common to both the first and third layers as a tie layer or connecting layer. Thus, **the lesser affinity between the second and third layers relative to the first and second layers produces a relatively peelable bond between the second and third layers**. Selection of the various materials determines the nature of the bond, i.e., whether it is permanent, peelable, fracturable or combinations thereof.

(Page 10 lines 3-13 of the original application as filed, corresponding to Paragraph 30 of the original application as published, emphasis added.) Furthermore, despite the peeling / separation at an *interior* layer and contrary to the teachings of Donovan, the peelable seal of the claims of the present application is still, by definition,

readily peelable without uncontrolled or random tearing or rupturing the packaging materials which may result in premature destruction of the package and/or inadvertent contamination or spillage of the contents of the package.

(Page 7 lines 22-24 of the original application as filed, corresponding to Paragraph 27 of the original application as published.)

As stated by the Court in KSR International Co. v. Teleflex Inc., "[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious." (82 USPQ 1385, 1395 (2007), citing United States v. Adams, 383 U.S. 39, 51-52 (1966).) Additionally, "[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." (In re Gurley, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).) The teachings of Donovan are contrary to and teach away from the

claims of the present application. Donovan teaches that varying tensile strengths/affinities between layers of a film to achieve peeling at an *interior* layer will result in a z-direction tear that negatively and deconstructively disrupts the package. Donovan teaches that peeling at an *interior* layer of the film, as opposed to a seal interface, is to be avoided. Therefore, Donovan teaches away from each of claims 1, 3-5, 7-13, 15-19, 21-36, 38-43, 50, 52-62 and 64-73 of the present application.

B. Substantive Factual Errors in the July 8, 2008 Office Action

Applicant has carefully reviewed the July 8, 2008 Office Action and notes several substantive factual errors regarding the prior art and the present application. As a result, applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness for claims 10-13, 15, 17, 22-23, 30-31, 33, 41-42, 52, 59-60, 62 and 68-69.

1. Claims 10-13, 15

On page 6 of the July 8, 2008 Office Action, the Examiner states,

In regard to claim 10, Donovan et al. teach that the first seal includes the claimed seal strip (strips 13 and 25, col. 8, lines 47-65), where the heat seals join the respective surfaces of the strip to the respective side of the film (col. 4, lines 40-44).

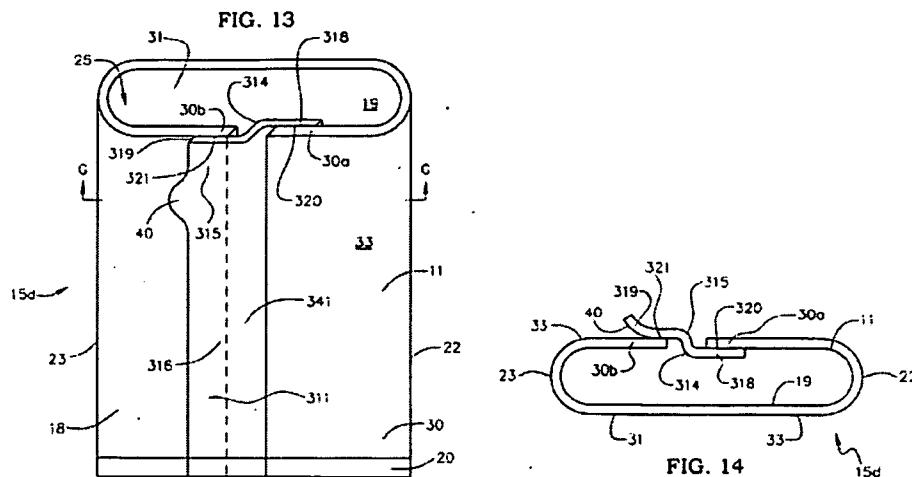
However, strips 13 and 25 of Donovan Figures 1 and 25, respectively, depict a lap seal and a fin seal, respectively, and not a seal strip as defined by claim 10 of the present application.

As explained by Donovan at Column 8 lines 47-65

Referring now to the drawings, the present invention is explained in relationship to *lap seal* and *fin seal* packages. FIG. 1 is a schematic representation of a package 10 formed by closing a multi-layer film by a *lap seal*. A multi-layer film web 14 has been closed to form the package 10 by joining web edges 11 and 12 at *an overlap* 13. FIG. 1a is a cross-section schematic of a view taken from line a-a in FIG. 1 which shows the overlapping relationship of the edges 11 and 12. The package is also depicted schematically as being sealed at either end by top seal 15 and bottom seal 16. This type of package is formed on a VFFS apparatus and tunnels will be formed in the ends 16' and 17' of seals 15 and 16.

Similarly, FIG. 2 and 2a depict a package formed on a VFFS machine by the formation of a *fin seal* 25. The *fin seal* 25 is formed by web edges 21 and 22 together and bending the joined ends back towards the package at bend 23 to form the *fin seal* 25. The package is also depicted as having end seals 26 and 27 at the top and bottom thereof, respectively.

(Emphasis added.) Neither the lap seal nor the fin seal taught by Donovan is a seal strip with a first margin sealed to an *inner* surface of a bag via a first heat seal and a second margin sealed to an *outer* surface of a bag via a second heat seal (as stated in claim 10 of the present application.) The present application illustrates a possible embodiment including a seal strip (as opposed to a lap seal, fin seal or butt-seal tape) at Figures 13 and 14:



Donovan teaches a lap seal and a fin seal but does not teach a seal strip as in the claims of the present application. Accordingly, as Donovan does not teach a seal strip as in claim 10 of the present application, Donovan fails to teach the seal strip with a second heat seal as a peelable seal as in claim 11, the seal strip with a first heat seal as a peelable seal as in claim 12, the seal strip with a strip film comprising a peelable system as in claim 13 and the seal strip with a strip film including a pull flap as in claim 15. Donovan is silent regarding a seal strip as in the claims of the present application. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness for claims 10-13 and 15.

2. Claims 17, 30-31, 33, 41, 52, 59-60 and 62

On page 7 of the July 8, 2008 Office Action, the Examiner states,

In regard to claims 17 and 52, Donovan et al. teach that the multilayer barrier film comprises an inner heat sealing layer (item 63 or 67), a barrier layer (item 68), a core layer (item 65), a tie layer (item 67 or item 63) and an outer heat sealing layer (item 61) (Fig. 6 and col. 11, lines 18-36 and 56-66).

Figure 6 of Donovan is reproduced, in part, below, with the Examiner's characterization of the layers and Donovan's actual teaching regarding the layers (as found at Column 11 lines 18-36 and 56-66).

	Examiner's Characterization	Donovan's Teaching
61	outer heat sealing layer	sealing layer
63	inner heat sealing layer OR tie layer	intermediate layer
65	core layer	OPP layer
67	inner heat sealing layer OR tie layer	tie layer
68	barrier layer	barrier layer

The Examiner is in error in characterizing Donovan as teaching both an "outer heat sealing layer" and a separate "inner heat sealing layer." Donovan clearly teaches only one specific sealing layer. As explained below, the Examiner is also in error in characterizing inner layers of Donovan as corresponding to the "inner heat sealing layer" of the present application.

Applicant explains a possible embodiment of claims 17 and 52 of the present application as follows:

A preferred easy to peel heat shrinkable film 11 is a five layer coextrusion and includes from *inner surface 19 of the tube member 19 (See FIG. 2) to an opposing outer surface 33.*

- (a) an inner surface heat sealing layer 34 preferably comprising a blend of ethylene vinyl acetate (EVA) and polyethylene;
- (b) a barrier layer 35 preferably comprising a vinylidene chloride copolymer (PVDC);
- (c) a core layer 36 preferably comprising a blend of EVA and polyethylene;
- (d) a tie layer 37 preferably comprising a blend of polyethylene and polybutylene; and,
- (e) an outer surface heat sealing layer 38 preferably comprising polyethylene.

(Page 12, lines 10-18 of the original application as filed, corresponding to Paragraphs 35-40 of the original application as published, emphasis added.) Figure 3 of the present application is reproduced, in part, below, with the applicant's actual explanation of the film of claims 17 and 52 (as found above).

	Applicant's Teaching
38	outer surface heat sealing layer
37	tie layer
36	core layer
35	barrier layer
34	inner surface heat sealing layer

The "inner heat sealing layer" and "outer heat sealing layer" of the present application are "inner" and "outer" in relation to the inner surface of a tube member and an opposing outer surface of a tube member (c.f. "inner surface of the tube member 19 . . . to an opposing outer surface 33"). "Inner" and "outer" are in relation to what the film is sealed (i.e., the inner surface of the tube member or the outer surface of the tube member) and not in relation to the layers of the film itself. The Examiner is overreaching and impermissible using the teachings of the present application to (incorrectly) include an "inner heat sealing layer" in Donovan.

The film structures of the possible embodiments of claims 17 and 52 of the present application clearly differ from the teachings of Donovan. Each of claims 17 and 52 includes both an "outer heat sealing layer" and a separate "inner heat sealing layer." Donovan, however, includes no teaching of two separate sealing layers in the same film and teaches only one specific sealing layer.¹

As Donovan fails to teach both an "outer heat sealing layer" and a separate "inner heat sealing layer" in the same film structure as in claims 17 and 52 of the present application, it logically follows that Donovan also fails to teach any composition of such a separate "inner heat sealing layer" or any characteristics of a film including such a separate "inner heat sealing layer." Yet, according to the Examiner, Donovan teaches that a separate "inner heat sealing layer" comprises a blend of polyethylene and ethylene-vinyl acetate copolymer as in claims 30 and 59 of the present application (see Page 9 of July 8, 2008 Office Action), Donovan teaches a film structure with a separate "inner heat sealing layer" comprising a blend of polyethylene and ethylene-vinyl acetate copolymer as in claims 31 and 60 of the present application (see Pages 8 and 9 of the July 8, 2008 Office Action), Donovan

¹ Applicant notes that Ramesh also includes no teaching of two separate sealing layers in the same film and teaches only one specific sealing layer, which may be either an outer film layer or an inside film layer, but not both an outer and an inside film layer. At Column 14 lines 36-46, Ramesh states,

As used herein, the phrases "seal layer" and "sealant layer", with respect to multilayer films, refers to an outer film layer, or layers, involved in the sealing of the film to itself or another layer. It should also be recognized that in general, the outer 0.5 to 3 mils of a film can be involved in the sealing of the film to itself or another layer. With respect to packages having only fin-type seals, as opposed to lap seals, the phrase "sealant layer" generally refers to the inside film layer of a package, as well as supporting layers adjacent this sealant layer often being sealed to itself, and frequently serving as a food contact layer in the packaging of foods.

teaches a film structure with a separate "inner heat sealing layer" comprising less than 50% of the total thickness of the film as in claims 33 and 62 of the present application (see Page 9 of the July 8, 2008 Office Action), and Donovan teaches a bag with a separate "inner heat sealing layer" forming the inside surface as in claim 41 of the present application (see Page 11 of the July 8, 2008 Office Action). Since Donovan fails to teach the presence of both an "outer heat sealing layer" and a separate "inner heat sealing layer" in the same film structure as described in the present application, the Examiner has failed to establish a *prima facie* case of obviousness for claims 17, 52, 30, 59, 31, 60, 33, 62 and 41 (i.e., claims 17, 30-31, 33, 41, 52, 59-60 and 62).

3. Claims 22-23 and 68-69

On Page 7 and 8 of the July 8, 2008 Office Action, the Examiner states,

In regard to claims 22 and 68, the tie layer, item 67 of Donovan et al. is permanently bonded to the core layer, item 65, and peelably bonded to the outer heat sealing layer, item 61, via the core layer and the inner heat sealing layer, item 63 (Fig. 6 and col. 11, lines 18-36 and 56-66).

In regard to claims 23 and 69, the tie layer, item 63, of Donovan et al. is permanently bonded to the outer heat sealing layer, item 61 and peelably bonded to the core layer, item 65 (Fig. 6 and col. 11, lines 18-30).

As explained above, Donovan fails to teach a separate inner heat sealing layer.

Furthermore, Figure 6 and Column 11 lines 18-36 of Donovan are silent as to any peelability of any specific layers of the structure of the Donovan. Once again, it appears as if the Examiner is overreaching and impermissible using the teachings of the present application to (incorrectly) imbue characteristics in Donovan.

This overreaching is especially apparent in light of Donovan's emphasis on a package which peels along the seal itself and not within a specific *interior* layer of a film. As discussed above, in Donovan no peeling is to occur between any layers. Donovan explains,

Additionally, it is also desirable to have provide seals which can be readily opened by the consumer *without creating a "z-direction" tear. A z-direction tear is one which causes the disruption of the integrity of the multi-layer film when the film is pulled apart at the seal.* FIG. 8 depicts a z-direction tear. *A z-direction tear is one which does not simply separate at the line at which the seal is formed.* Instead, the separation extends to layers of the film which ripped along the layers thereof and not simply delaminated one from another. As a result of z-direction tears, it is difficult to reclose such packages to maintain freshness of the contents. When z-

direction tears can be eliminated, packages are easily refolded and sealed by a mechanical means such as a clip imposed over the folds of the once-opened package. Z-direction tears can result when the adhesive properties used to seal the package create a tensile strength greater than that required to *disrupt the integrity of one or more of the layers of the film web. It is desirable to produce a package which will separate along the seal during opening so that the package can be easily reclosed and secured against passage of air.*

(Column 2 lines 34-54, emphasis added.) Donovan continues

In addition to the advantages set forth above, the present invention has also improved packaging prepared in accordance with the invention by *eliminating z-direction tear upon separation of the sealed films.*

(Column 5 lines 32-35, emphasis added.) Considering the teachings of Donovan, a "tie layer" of Donovan could not be peelably bonded to an "outer heat sealing layer" or a "core layer" as in claims 22-23 and 68-69 of the present application. If a tie layer was peelably bonded as such, the package would separate in the *interior* layers of the film and not along the seal. According to Donovan, this would disrupt the integrity of the multilayer film and be contrary to the teachings and objectives of Donovan (as quoted above). Therefore, Donovan does not teach any layers peelably bonded to any other layers, and the Examiner has failed to establish a *prima facie* case of obviousness for claims 22-23 and 68-69.

4. Claim 42

On Page 11 of the July 8, 2008 Office Action, the Examiner states,

In regard to claim 42, Donovan et al. teach that the first seal comprises a *lap seal* (col. 8, lines 47-59) and that the first side includes an unsealed portion (the portion of the film that forms the border of tunnel 37) extending outwardly beyond the first seal (col. 9, lines 4-8 and Fig. 3).

(Emphasis added.) In this statement, the Examiner cites Column 9 lines 4-8 of Donovan, which states,

As the end is sealed, the thickness dimension and stiffness of the film creates tunnels 34 and 36 [of Figure 3, reproduced below] at each edge of the package, while yet another tunnel 37 is formed at the convergence of the multi-layer film at the *fin seal* area.

(Emphasis added.)

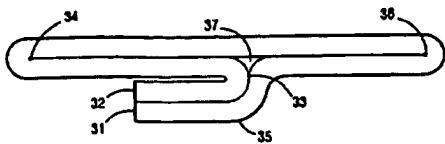


FIG. 3

Applicant is confused by the Examiner's citing of a figure and an explanation relating to a *fin seal* package to support a *prima facie* case of obviousness for a characteristic of a *lap seal* package as in claim 42 of the present application. Applicant is further confused as to how the tunnel 37 (or the border of the tunnel 37) may be stated to extend beyond the first seal (as the lap seal in claim 42.), especially in view of Donovan's definition of "tunnels":

As a consequence of processing high-barrier property multi-layer films in high speed form/fill/seal apparatus, a structural phenomenon known as "tunnels" are formed. Tunnels are formed at the overlap of film which occurs when the film is folded, such as at the *bottom of pouches* formed on HFFS apparatus and at the *sides of pouches* formed on VFFS apparatus. Tunnels are also formed at the convergence of film web at a *fin seal* area. The examples of tunnels 34, 36, and 37 are depicted in FIG. 3.

(Column 2 lines 10-18, emphasis added.) According to Donovan, tunnels form at the bottom of a pouch, at the sides of a pouch or in the fin seal area. Donovan makes no mention of tunnels extending beyond a lap seal. Applicant respectfully requests additional explanation regarding the Examiner's statements for claim 42 of the present application. Without such additional explanation, in view of Donovan's teachings the Examiner has failed to establish a *prima facie* case of obviousness for claim 42.

III. CONCLUSION

Applicant respectfully submits that the current amendments to independent claims 1, 43 and 50 patentably distinguish each of the claims of the present application from the cited prior art. The cited prior art does not teach or suggestion all the limitations of the claims of the present application. Furthermore, the cited prior art teaches away from the claims of the present application. Additionally, applicant respectfully submits that the July 8, 2008 Office Action includes several substantive factual errors and that, accordingly, the Examiner has failed to establish a *prima facie* case of obviousness for claims 10-13, 15, 17, 22-23, 30-31,

33, 41-42, 52, 59-60, 62 and 68-69 of the present application. Therefore, in view of the above remarks and amendments, applicant submits that the claims of the present application are patentable and in condition for allowance.

Applicant respectfully requests that the Examiner withdraw the finality of the July 8, 2008 Office Action, enter the current amendments and allow each of claims 1, 3-5, 7-13, 15-19, 21-36, 38-43, 50, 52-62 and 64-73 of the present application. If a telephone conference would expedite allowance of the claims, the Examiner may contact the applicant via applicant's attorney at (920) 303-7970.

Respectfully submitted,

Date: January 8, 2009

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